



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-904]

Certain Activated Carbon from the People's Republic of China: Preliminary Results of the Fourth Antidumping Duty Administrative Review, and Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce ("Department") is conducting the fourth administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC") for the period April 1, 2010, through March 31, 2011. The Department has preliminarily determined that sales have been made below normal value ("NV") by certain respondents examined in this administrative review. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Josh Startup, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-9068 or (202) 482-5260, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Petitioners¹ and certain PRC and other companies, in accordance with 19 CFR 351.213(b), during the anniversary month of April, to conduct a review of certain activated carbon exporters from the PRC. On May 27, 2011, the Department initiated this review with respect to all requested companies.²

On June 10, 2011, Petitioners withdrew their request for an administrative review for Calgon Carbon (Tianjin) Co., Ltd. (“CCT”) and Ningxia Huahui Activated Carbon Co., Ltd. (“Huahui”). On the same date, Huahui withdrew its request for a review of itself, and Albemarle Corporation (“Albemarle”), a company we previously determined to be a wholesaler of the domestic-like product, withdrew its request for review of CCT. Likewise, on June 15, 2011, CCT withdrew its request for a review of itself. On July 7, 2011, the Department published a notice of rescission in the Federal Register for these two companies for which the request for review was withdrawn.³ On August 25, 2011, Petitioners withdrew the request for review with respect to an additional 166 companies.⁴ On September 20, 2011, the Department published a second notice of

¹ Collectively, Norit Americas Inc. (“Norit”) and Calgon Carbon Corporation (“Calgon”).

² See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 76 FR 30912 (May 27, 2011) (“Initiation Notice”).

³ See Certain Activated Carbon From the People’s Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review, 76 FR 39581 (July 7, 2011).

⁴ Petitioners also withdrew their request for review of United Manufacturing International (Beijing) Ltd. (“UMI”). However, UMI submitted a request on its behalf for an administrative review in the current segment of the proceeding. See Letter from UMI, dated April 21, 2011.

rescission in the Federal Register for those 165 companies.⁵ Nineteen companies remain subject to this review.⁶

On July 25, 2011, Shanxi Dapu International Trade Co., Ltd. (“Dapu”) submitted a letter certifying it had no shipments during the period of review (“POR”).⁷ On September 30, 2011, the Department published a notice⁸ extending the time period for issuing the preliminary results by 120 days to April 29, 2012.⁹

On April 2, 2012, the Department received comments from Datong Juqiang and Guanghua Cherishmet regarding surrogate country selection and certain surrogate values. However, because of the close proximity to the preliminary results, we are unable to take Datong Juqiang and Guanghua Cherishmet’s comments into consideration for the preliminary results. Datong Juqiang and Guanghua Cherishmet’s comments will be considered for the final results of this review.

⁵ See Certain Activated Carbon from the People’s Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review, 76 FR 58246 (September 20, 2011).

⁶ These companies are: Adsorbent Carbons Pvt, Ltd.; Beijing Pacific Activated Carbon Products Co., Ltd.; Cherishmet Incorporated; Datong Juqiang Activated Carbon Co., Ltd.; Datong Municipal Yungang Activated Carbon Co., Ltd.; Hebei Foreign Trade and Advertising Corporation; Jacobi Carbons AB; Jilin Bright Future Chemicals Company, Ltd.; Jilin Province Bright Futures Industry and Commerce Co., Ltd.; Ningxia Guanghua Cherishment Activated Carbon Co., Ltd.; Ningxia Mineral & Chemical Limited; Shanxi Dapu International Trade Co., Ltd.; Shanxi DMD Corporation; Shanxi Sincere Industrial Co., Ltd.; Shanxi Industry Technology Trading Co., Ltd.; Tangshan Solid Carbon Co., Ltd.; Tianjin Maijin Industries Co., Ltd.; and United Manufacturing International (Beijing) Ltd.

⁷ Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.

⁸ See Fourth Administrative Review of Certain Activated Carbon From the People’s Republic of China: Extension of Time Limits for Preliminary Results, 76 FR 60803 (September 30, 2011).

⁹ Because April 29, 2011, is a Sunday, the actual deadline for issuing the preliminary results falls on April 30, 2012, the next business day. See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533, 24533 (May 10, 2005).

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (the “Act”) directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.¹⁰ However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers, if it is not practicable to examine all exporters or producers for which the review is initiated.

On May 31, 2011, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order (“APO”) to all interested parties having access to materials released under APO and invited comments regarding the CBP data and respondent selection. The Department received comments regarding respondent selection on June 9, 2011.

On July 11, 2011, the Department issued its respondent selection memorandum after assessing its resources, considering the number of individual exporters of certain activated carbon for which a review had been requested, and determining that it could reasonably examine three of the exporters subject to this review.¹¹ Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Datong Juqiang Activated Carbon Co., Ltd. (“Datong Juqiang”), Jacobi Carbons AB (“Jacobi”), and Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (“Guanghua Cherishmet”) as mandatory respondents.

¹⁰ See also 19 CFR 351.204(c) regarding respondent selection, in general.

¹¹ See Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Jamie Blair-Walker, International Trade Compliance Analysts, Office 9; Antidumping Duty Administrative Review of Certain Activated Carbon from the PRC: Selection of Respondents for Individual Review, dated July 11, 2011.

Questionnaires

On July 11, 2011, the Department issued its initial non-market economy (“NME”) antidumping duty questionnaire to the mandatory respondents, Datong Juqiang, Guanghai Cherishmet, and Jacobi. Datong Juqiang, Guanghai Cherishmet, and Jacobi timely responded to the Department’s initial and subsequent supplemental questionnaires between August 2011 and March 2012.

Period of Review

The POR is April 1, 2010, through March 31, 2011.

Scope of the Order

The merchandise subject to the order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by “activating” with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO₂) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO₂ gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of the order covers all forms of activated carbon that are activated by steam or CO₂, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of the order covers all physical forms of

certain activated carbon, including powdered activated carbon (“PAC”), granular activated carbon (“GAC”), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride, sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO₂ gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are outside the scope. This exclusion language regarding blended material applies only to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Intent to Partially Rescind Administrative Review

As discussed in the “Background” section above, Dapu filed a no-shipment certification indicating that it did not export subject merchandise to the United States during the POR. In order to examine this claim, we reviewed the CBP data used for respondent selection and found no discrepancies with the statement made by Dapu.¹² Additionally, we sent an inquiry to CBP asking if any CBP office had any information contrary to the no-shipments claim and requested that CBP alert the Department of any such information within ten days of receiving our inquiry. CBP received our inquiry on December 21, 2011. We have not received a response from CBP with regard to our inquiry which indicates that CBP did not have information that was contrary to the claim of Dapu. Therefore, because the record indicates that Dapu did not export subject merchandise to the United States during the POR, we intend to rescind this administrative review with respect to this company.¹³

Non-Market Economy Country Status

¹² See Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Jamie Blair-Walker, International Trade Compliance Analysts, Office 9; Antidumping Duty Administrative Review of Certain Activated Carbon from the PRC: Selection of Respondents for Individual Review, dated July 11, 2011 at Attachment I.

¹³ See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 72 FR 53527, 53530 (September 19, 2007), unchanged in Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission, 73 FR 15479, 15480 (March 24, 2008).

In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (“the Act”), the designation of a country as an NME country remains in effect until it is revoked by the Department. As such, we continue to treat the PRC as a NME in this proceeding. When the Department investigates imports from an NME country and available information does not permit the Department to determine NV, pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(1), the Department determines NV on the basis of the factors of production (“FOP”) utilized in producing the merchandise.

Surrogate Country

Section 773(c)(4) of the Act, directs the Department to value an NME producer’s FOPs, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. From the countries that are both economically comparable and significant producers, the Department will select a primary surrogate country based upon whether the data for valuing FOPs are both available and reliable.¹⁴ In this review, the Department determined that Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.¹⁵

¹⁴ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin 04.1”), available on the Department’s web site at <http://ia.ita.doc.gov/policy/index.html>.

¹⁵ See Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, Import Administration, from Carole Showers, Director, Office of Policy, Import Administration re: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People’s Republic of China (“PRC”), dated July 25, 2011.

On July 26, 2011, the Department sent interested parties a letter inviting comments on surrogate country selection and information regarding valuing FOPs.¹⁶ On October 27, 2011, Datong Juqiang, Jacobi, and Guanghua Cherishmet submitted comments on the selection of a surrogate country, contending that the Philippines is the appropriate surrogate country for this review.¹⁷ On October 28, 2011, Petitioners submitted comments on the selection of a surrogate country, arguing that Indonesia or Thailand are appropriate surrogate countries for this review.¹⁸ On November 16, 2011, the Department received information to value FOPs from Datong Juqiang, Jacobi, Guanghua Cherishmet and Petitioners.¹⁹ On November 23, 2011, Jacobi submitted rebuttal surrogate value comments.²⁰ On November 28, 2011, Petitioners, Datong Juqiang, and Guanghua Cherishmet submitted rebuttal surrogate value comments.²¹ On February 21, 2012, Jacobi submitted additional information to value FOPs.²²

Economic Comparability

As explained in our Surrogate Country List, the Department considers Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine all comparable to the PRC in

¹⁶ See the Department's Letter to All Interested Parties; Fourth Administrative Review of Certain Activated Carbon from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments, dated July 26, 2011 ("Surrogate Country List").

¹⁷ See Letter from Jacobi regarding Surrogate Country Comments dated October 27, 2011; see also Letter from Guanghua Cherishmet and Datong Juqiang regarding Surrogate Country Comments dated October 27, 2011.

¹⁸ See Letter from Petitioners regarding Surrogate Country Comments dated October 28, 2011.

¹⁹ See First Surrogate Value Submission from Cherishmet and DJAC, dated November 16, 2011; see Jacobi's Surrogate Value Comments, dated November 16, 2011; see Petitioners Comments on Surrogate Values for Preliminary Results, dated November 16, 2011.

²⁰ See Letter from Jacobi Clarifying Factual Information, dated November 23, 2011.

²¹ See Petitioners' Comments on Respondents' Surrogate Value Submissions for Preliminary Results, dated November 28, 2011; see First Surrogate Value Rebuttal Submission of Cherishmet Group and DJAC, dated November 28, 2011.

²² See Jacobi's Supplemental Surrogate Value Comments, dated February 21, 2011.

terms of economic development.²³ Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria.²⁴

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin 04.1 for guidance on defining comparable merchandise. The Policy Bulletin 04.1 states that “[t]he terms ‘comparable level of economic development,’ ‘comparable merchandise,’ and ‘significant producer’ are not defined in the statute.”²⁵ The Policy Bulletin 04.1 further states that “[i]n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”²⁶ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.²⁷ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.²⁸ “In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does

²³ See Surrogate Country List.

²⁴ See section 773(c)(4)(A) of the Act.

²⁵ See Policy Bulletin 04.1.

²⁶ See id.

²⁷ The Policy Bulletin 04.1 also states that “[i]f considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” See id., at n. 6.

²⁸ See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65674 (December 15, 1997) and accompany Issues and Decision Memorandum at Comment 1 (“to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute”).

this depends on the subject merchandise.”²⁹ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, i.e., inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.³⁰

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.³¹

The legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”³² and it does not preclude reliance on additional or alternative metrics. In this case, because production data of identical or comparable merchandise from the countries on the surrogate country list are not available, we analyzed which of the six countries are exporters of identical or comparable merchandise as a proxy for production data. We obtained export data using the Global Trade Atlas (“GTA”) for Harmonized Tariff Schedule (“HTS”) 3802.10: Activated Carbon, which is identical to the merchandise under consideration. The GTA data demonstrates that Indonesia, the Philippines, and Thailand were significant net exporters of identical merchandise in 2010.³³ Accordingly, because Colombia, South Africa and

²⁹ See Policy Bulletin 04.1.

³⁰ See id.

³¹ See section 773(c)(1) of the Act; Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999).

³² See Conference Report accompanying H.R. 3, the 1988 Omnibus Trade & Competitiveness Act, H. Rep. No. 100-576, at 590 (1988) (“Conference Report”).

³³ GTA subtracts a country's imports from its exports to arrive at net exports. See Memorandum to the File through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Katie Marksberry and Josh Startup, International Trade Specialists, Office 9, re: “Fourth Administrative Review of Certain Activated Carbon from the People’s Republic of China: Surrogate Values for the Preliminary Results,” dated concurrently with this notice (“Prelim SV Memo”) at Exhibit 3.

Ukraine are not significant net exporters of activated carbon under HTS 3802.10, these countries will not be considered for primary surrogate country selection purposes at this time.

Since only Indonesia, the Philippines and Thailand of the potential surrogate countries have not been disqualified through the above analysis, the Department looks to the availability of surrogate value (“SV”) data to determine the most appropriate surrogate country.³⁴

Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.³⁵ There is no hierarchy among these criteria.³⁶ It is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.³⁷ With respect to Indonesia, although Petitioners placed certain surrogate value data on the record, surrogate financial statements from Indonesia are unavailable, whereas there are surrogate financial statements from both the Philippines and Thailand on the record; therefore, we will not consider Indonesia for primary surrogate country selection purposes at this time.

With Colombia, Indonesia, South Africa, and Ukraine disqualified, the Department is left with the Philippines and Thailand as potential surrogate countries. Again, we looked to data considerations in selecting the appropriate surrogate country and found that there are no usable import statistics for Philippine bituminous coal on the record. Specifically, all of the Philippine imports of bituminous coal under HTS 2701.12 are from Indonesia, which are excluded from the

³⁴ See Policy Bulletin 04.1.

³⁵ See id.

³⁶ See id.

³⁷ See id.

Departments calculation of surrogate values.³⁸ One respondent, Datong Juqiang, reported that it used bituminous coal with a calorific value over 5,833 kcal/kg, which indicates that the best surrogate value data to apply to its bituminous coal input is for HTS 2701.12. Therefore, we do not have a bituminous coal surrogate value from the Philippines that is specific to the input used by Datong Juqiang. The specificity of the inputs is one of the Department's SV selection criteria and the GTA has been consistently used as a reliable source of import statistics³⁹ that fulfill the other SV selection criteria. In addition, we have Thai SV data for all other inputs (with the exception of steam, which is also missing from the Philippines SV data) and a Thai financial statement to calculate surrogate financial ratios. Therefore, we have selected Thailand as the primary surrogate country over the Philippines. A detailed explanation of the SVs is provided below in the "Normal Value" section of this notice.

Facts Available

Sections 776(a)(1) and 776(a)(2) of the Act provide that, if necessary information is not available on the record, or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

³⁸ See China Nat'l Mach. Import & Export Corp. v. United States, 293 F. Supp. 2d 1334, 1336 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004) and Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum, at Comment 4.

³⁹ See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comment 4.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information,” the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department; and (5) the information can be used without undue difficulties.

However, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for

information from the administering authority or the Commission, the administering authority or the Commission . . . , in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.”⁴⁰ Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴¹ An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.⁴²

Jacobi’s Excluded Producers

On July 22, 2011, Jacobi requested to be excused from reporting FOP data for certain Chinese producers. On August 1, 2011, Petitioners submitted comments on Jacobi’s request. On August 12, 2011, the Department notified Jacobi that due to the large number of producers that supplied Jacobi during the POR, Jacobi would be excused from reporting certain FOP data.⁴³ Specifically, the Department did not require Jacobi to report FOP data for its eleven smallest producers.⁴⁴ Additionally, the Department notified Jacobi that it was not required to report FOP data for products that were purchased by Jacobi’s suppliers, as indicated in Jacobi’s July 22, 2011 letter.⁴⁵

Guanghua Cherishmet’s Excluded Producers

On September 9, 2011, Guanghua Cherishmet requested to be excused from reporting FOP data for a Chinese producer because of the limited quantity it produced. On September 19,

⁴⁰ See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1, at 870 (1994) (“SAA”), reprinted in 1994 U.S.C.C.A.N. 4040, 4198-99.

⁴¹ See *id.*

⁴² See *id.*

⁴³ See the Department’s Letter to Jacobi dated August 12, 2011.

⁴⁴ See *id.*

⁴⁵ See *id.*

2011, the Department notified Guanghua Cherishmet that, because the quantity produced by one of its suppliers is limited and Guanghua Cherishmet produces comparable products during the POR, Guanghua Cherishmet would be excused from reporting certain FOP data.⁴⁶ Specifically, the Department did not require Guanghua Cherishmet to report FOP data for its smallest producer as indicated in its September 9, 2011, submission.⁴⁷

In accordance with section 776(a)(1) of the Act, the Department is applying facts available to determine the NV for the sales corresponding to the FOP data that Jacobi and Guanghua Cherishmet were excused from reporting. As facts available, the Department is applying the calculated average normal value of Jacobi and Guanghua Cherishmet's reported sales to the sales produced by their excluded producers, respectively. These issues are addressed in separate company-specific memoranda where a detailed explanation of the facts available calculation is provided.⁴⁸

Separate Rates

The designation of a country as an NME remains in effect until it is revoked by the Department.⁴⁹ In proceedings involving NME countries, it is the Department's practice to begin

⁴⁶ See the Department's letter to Guanghua Cherishmet dated September 19, 2010.

⁴⁷ See *id.*

⁴⁸ See Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Joshua Startup, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Jacobi Carbons AB in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China, dated concurrently with this notice ("Jacobi Prelim Analysis Memo"); see also Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Bob Palmer, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China, dated concurrently with this notice ("Guanghua Cherishmet Prelim Analysis Memo").

⁴⁹ See section 771(18)(c)(i) of the Act.

with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.⁵⁰

In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews.⁵¹ It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent so as to be entitled to a separate rate.⁵² Exporters can demonstrate this independence through the absence of both de jure and de facto government control over export activities.⁵³ The Department analyzes each entity's export independence under a test first articulated in Sparklers and as further developed in Silicon Carbide.⁵⁴ However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.⁵⁵

The Department received separate rate applications or certifications from the following companies: Adsorbent Carbons Pvt. Ltd.; Beijing Pacific Activated Carbon Products Co., Ltd.; Datong Municipal Yunguang Activated Carbon Co., Ltd.; Jilin Bright Future Chemicals Company, Ltd.; Ningxia Mineral & Chemical Limited; Shanxi DMD Corporation; Shanxi Sincere

⁵⁰ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53080 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

⁵¹ See Initiation Notice, 76 FR at 30912-30913.

⁵² See id.

⁵³ See id.

⁵⁴ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"); see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide")

⁵⁵ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

Industrial Co., Ltd.; Shanxi Industry Technology Trading Co., Ltd.; Tangshan Solid Carbon Co., Ltd. (“Tangshan”); Tianjin Maijin Industries Co., Ltd.; and United Manufacturing International (Beijing) Ltd. (“UMI”).

Additionally, the Department received completed responses to the Section A portion of the NME questionnaire from the mandatory respondents Datong Juqiang, Guanghua Cherishmet, and Jacobi, which contained information pertaining to the companies’ eligibility for a separate rate. However, Hebei Foreign Trade and Advertising Corporation and Jilin Province Bright Future Industry and Commerce Co., Ltd., companies upon which the Department initiated administrative reviews that have not been rescinded, did not submit either a separate-rate application or certification.

Companies Not Receiving a Separate Rate

On July 27, 2011, Adsorbent, an Indian activated carbon company, submitted a separate rate application as it claims it had sales of the subject merchandise to the United States during the POR.⁵⁶ On December 2, 2011, the Department issued a supplemental questionnaire to Adsorbent regarding its claim.⁵⁷ On December 22, 2011, Adsorbent responded to a supplemental questionnaire regarding its separate rate application, claiming that it had purchased activated carbon from unaffiliated PRC suppliers,⁵⁸ and reprocessed and repackaged the activated carbon in India for resale to its U.S. customer.⁵⁹ However, the CBP data used for respondent selection

⁵⁶ See Letter from Adsorbent, dated July 27, 2011.

⁵⁷ See Letter from the Department dated December 2, 2011.

⁵⁸ See Letter from Adsorbent, dated July 27, 2011 at 12.

⁵⁹ See Letter from Adsorbent, dated December 11, 2011 at 3.

indicates no entries of the subject merchandise were made by Adsorbent.⁶⁰ Additionally, the CBP 7501 Forms provided by Adsorbent's importer indicate that the entries of the merchandise Adsorbent claims were subject PRC-origin were in fact made as non-subject "Type 1" entries.⁶¹

CBP data reviewed by the Department do not show any reviewable entries of subject merchandise made by the third-country exporter Adsorbent during the POR. There is no information on the record of this proceeding indicating that Adsorbent made entries of subject merchandise during the POR.⁶² Additionally, we intend to refer this matter to CBP to investigate whether Adsorbent's entries were entered properly.

On July 22, 2011, the Department received a timely separate rate application from UMI, a company currently considered part of the PRC wide entity.⁶³ On November 21, 2011, the Department issued a supplemental questionnaire to UMI requesting clarification on certain deficiencies in its separate rate application.⁶⁴ However, UMI did not submit a response or request an extension to the Department's supplemental questionnaire by the deadline.

Therefore, because Hebei Foreign Trade and Advertising Corporation, Jilin Province Bright Future Industry and Commerce Co., Ltd., and UMI did not demonstrate their eligibility for separate rate status, we have preliminarily determined to consider these companies as part of the PRC-wide entity.

Separate Rate Recipients

⁶⁰ See Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Jamie Blair-Walker, International Trade Compliance Analysts, Office 9; Antidumping Duty Administrative Review of Certain Activated Carbon from the PRC: Selection of Respondents for Individual Review, dated May 31, 2011 at Attachment I.

⁶¹ See Adsorbent's supplemental response, dated December 11, 2011, at Exhibit 2.

⁶² See Saccharin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part, 77 FR 21966, 21967 (April 12, 2012).

⁶³ See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208, 70210 (November 17, 2010).

⁶⁴ See the Department's Letter to UMI, dated November 21, 2011.

1. Wholly Foreign-Owned

Jacobi reported that it is wholly-owned by a company located in an ME country, Sweden.⁶⁵ Therefore, there is no PRC ownership of Jacobi and, because the Department has no evidence indicating that Jacobi is under the control of the PRC, a separate rates analysis is not necessary to determine whether it is independent from government control.⁶⁶ Additionally, one of the exporters under review not selected for individual review, Tangshan, demonstrated in its separate-rate certification that it is 100 percent ME foreign owned.⁶⁷ Accordingly, the Department has preliminarily granted separate rate status to Jacobi and Tangshan.

2. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Datong Juqiang,⁶⁸ Guanghua Cherishmet,⁶⁹ and eight⁷⁰ of the separate rate applicants in this administrative review stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies. In accordance with our practice, the Department has analyzed whether the separate-rate applicants have demonstrated the absence of de jure and de facto governmental control over their respective export activities.

⁶⁵ See Jacobi's Section A Questionnaire Response, dated August 11, 2011, at 2.

⁶⁶ See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

⁶⁷ See Tangshan Solid Carbon Co. Ltd.'s Separate Rate Certification dated July 26, 2011, at Attachment 1.

⁶⁸ See Datong Juqiang's Section A Questionnaire Response, dated August 18, 2011, at 2-6.

⁶⁹ See Guanghua Cherishmet's Section A Questionnaire Response, dated August 18, 2011, at 2-8.

⁷⁰ These companies are: Beijing Pacific Activated Carbon Products Co., Ltd.; Datong Municipal Yunguang Activated Carbon Co., Ltd.; Jilin Bright Future Chemicals Company, Ltd.; Ningxia Mineral & Chemical Limited; Shanxi DMD Corporation; Shanxi Sincere Industrial Co., Ltd.; Shanxi Industry Technology Trading Co., Ltd.; and Tianjin Maijin Industries Co., Ltd.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.⁷¹ The evidence provided by Datong Juqiang, Guanghai Cherishmet, and the eight separate rate applicants supports a preliminary finding of de jure absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.⁷²

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.⁷³ The Department has

⁷¹ See Sparklers, 56 FR at 20589.

⁷² See, e.g., Guanghai Cherishmet's Section A Questionnaire Response, dated August 18, 2011, at 5, Exhibit A-3, and Exhibit A-4; and Jilin Bright Future Chemicals Company, Ltd.'s Separate Rate Certification dated July 26, 2011, at 5-6.

⁷³ See Silicon Carbide, 59 FR at 22586-87; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Datong Juqiang, Guanghua Cherishmet, and the eight separate rate applicants supports a preliminary finding of de facto absence of government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.⁷⁴ Therefore, the Department preliminarily finds that Datong Juqiang, Guanghua Cherishmet, and eight separate-rate applicants have established that they qualify for a separate rate under the criteria established by Silicon Carbide and Sparklers.

Rate for Non-Selected Companies

The eight companies which are not mandatory respondents and which submitted timely information as requested by the Department remain subject to this review as separate rate respondents.

The Department has preliminarily calculated a de minimis margin for Datong Juqiang. Furthermore, because using the weighted-average margin based on the calculated net U.S. sales quantities for Guanghua Cherishmet and Jacobi would allow these two respondents to deduce each other's business-proprietary information and thus cause an unwarranted release of such

⁷⁴ See, e.g., Datong Juqiang's Section A Questionnaire Response, dated August 18, 2011, at 2-8 and Exhibit A-4; and Shanxi Sincere Industrial Co., Ltd. Separate Rate Application, dated November 25, 2011, at 17-19.

information, we cannot assign to the separate rate companies the weighted-average margin based on the calculated net U.S. sales values from these two respondents.

For these preliminary results and consistent with our practice,⁷⁵ we determine that using the ranged total sales quantities reported by Guanghua Cherishmet and Jacobi from the public versions of their submissions is more appropriate than applying a simple average.⁷⁶ These publicly available figures provide the basis on which we can calculate a margin which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of Guanghua Cherishmet and Jacobi. We find that this approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review.⁷⁷

Because the calculated net U.S. sales values for Guanghua Cherishmet and Jacobi are business-proprietary figures, we find that 1.34 U.S. Dollars/kilogram (“USD/kg”), which we calculated using the publicly available figures of U.S. sales quantities for these two firms, is the best reasonable proxy for the weighted-average margin based on the calculated U.S. sales quantities of Guanghua Cherishmet and Jacobi.⁷⁸ For the PRC-wide entity, we have assigned the

⁷⁵ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56158, 56160 (September 12, 2011) (“Vietnam Shrimp”); see also Galvanized Steel Wire From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 68407, 68415 (November 4, 2011) (“Galvanized Wire LTFV”).

⁷⁶ See Jacobi Section A questionnaire response (Public Version) dated September 13, 2011, at Exhibit 4; see also Guanghua Cherishmet Public Version of Exhibit SA-1 for the Section A Response, dated August 19, 2011.

⁷⁷ See Vietnam Shrimp at 56160; see also Galvanized Wire LTFV at 68415.

⁷⁸ See “Memorandum to the File from Bob Palmer, International Trade Specialist, Office 9 Re: Calculation of Separate Rate,” dated concurrently with this notice.

entity's 2.42 USD/kg, which is the current and only rate ever determined for the entity in this proceeding.⁷⁹

Date of Sale

Datong Juqiang, Guanghua Cherishmet, and Jacobi reported the invoice date as the date of sale because they claim that for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date. In accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale,⁸⁰ and in the absence of any information to the contrary, the Department preliminarily determines that the invoice date is the most appropriate date to use as Datong Juqiang's, Guanghua Cherishmet's, and Jacobi's date of sale.

Fair Value Comparisons

To determine whether sales of certain activated carbon to the United States by Datong Juqiang, Guanghua Cherishmet, and Jacobi were made at less than normal value, the Department compared constructed export price ("CEP") to NV, as described in the "U.S. Price," and "Normal Value" sections below.⁸¹

⁷⁹ See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007) and Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon From the People's Republic of China, 72 FR 15099 (March 30, 2007); see also Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208 (November 17, 2010) ("AR2 Carbon").

⁸⁰ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

⁸¹ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews"). In particular, the Department compared monthly weighted-average export prices (or constructed export prices) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated the EP for Datong Juqiang's sales to the United State because the first sale to an unaffiliated party was made before the date of importation, and the use of CEP was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, the Department deducted from the starting price (gross unit price) to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, the Department based the deduction of these movement charges on surrogate values.⁸²

Constructed Export Price

For all of Guanghai Cherishmet and Jacobi's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act because sales of Chinese-origin merchandise were made on behalf of the companies located in the PRC by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The

⁸² See Prelim SV Memo for details regarding the surrogate values for movement expenses.

Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, see the company specific analysis memoranda, dated concurrently with this notice.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from an ME country and pays for it in an ME currency, the Department may value the factor using the actual price paid for the input.⁸³ During the POR, Jacobi reported that it purchased certain inputs from an ME supplier and paid for the inputs in an ME currency.⁸⁴ The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the

⁸³ See Lasko Metal Products, Inc. v. United States, 43 F.3d 1442, 1445-1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs).

⁸⁴ See Jacobi's Section D Questionnaire Response dated September 1, 2011, at page D-9, and Exhibit JT-2.

total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.⁸⁵ In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average ME purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.⁸⁶ When a firm has made ME input purchases that may have been dumped or subsidized, are not bona fide, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33-percent threshold.⁸⁷

The Department used Thai Import Statistics to value the raw material and packing material inputs that Datong Juqiang, Guanghua Cherishmet, and Jacobi used to produce the subject merchandise under review during the POR, except where listed below. In accordance with the OTCA 1988 legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be

⁸⁵ See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61717-18 (October 19, 2006) ("Antidumping Methodologies").

⁸⁶ See id.

⁸⁷ See id.

subsidized.⁸⁸ In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.⁸⁹ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, the Department has not used prices from these countries in calculating the Thai import-based surrogate values. Additionally, the Department disregarded prices from NME countries. Finally, imports that were labeled as originating from an “unspecified” country were excluded from the average value, as the Department could not be certain that they were not from either an NME country or a country with general export subsidies.⁹⁰

In accordance with section 773(c) of the Act, for subject merchandise produced by Datong Juqiang, Guanghua Cherishmet, and Jacobi, the Department calculated NV based on the FOPs reported by Datong Juqiang, Guanghua Cherishmet, and Jacobi for the POR. The Department used data from Thai Import Statistics and other publicly available Thai sources in order to calculate surrogate values for Datong Juqiang’s, Guanghua Cherishmet’s, and Jacobi’s FOPs

⁸⁸ See Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 100-576, at 590 (1988) (“OTCA 1988”), reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24.

⁸⁹ See e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 70 FR 54007, 54011 (September 13, 2005), unchanged in Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006).

⁹⁰ See Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552, 24559 (May 5, 2008), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008).

(direct materials, energy, and packing materials) and certain movement expenses. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available Thai surrogate values (except as noted below). The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.⁹¹

As appropriate, the Department adjusted input prices by including freight costs to render the prices delivered prices. Specifically, the Department added to Thai import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in Sigma Corp. v. United States.⁹² For a detailed description of all surrogate values used for Datong Juqiang, Guanghai Cherishmet and Jacobi, see Prelim SV Memo.

In those instances where the Department could not obtain publicly available information contemporaneous to the POR with which to value factors, the Department adjusted the surrogate values using, where appropriate, the Thai Producer Price Index as published in the International Financial Statistics of the International Monetary Fund, a printout of which is attached to the Prelim SV Memo at Attachment 6. Where necessary, the Department adjusted surrogate values for inflation, exchange rates, and taxes, and the Department converted all applicable items to a per-kilogram or per-metric ton basis.

⁹¹ See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

⁹² See Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997).

The Department valued electricity using data from the Electrical Generating Authority of Thailand, Annual Report 2010: Key Statistical Data. We calculated an average of the price of energy sales to various customers.⁹³

Because water was used by the respondents in the production process of certain activated carbon, the Department considers water to be a direct material input, and not as overhead, and valued water with a SV according to our practice.⁹⁴ The Department valued water using data from Thailand's Board of Investment.⁹⁵ This source provides water rates for industrial users that are VAT exclusive. Although Petitioners suggested that we value water using information from Thailand's Metropolitan Waterworks Authority, we find that the information provided is approximate and not explicitly tax-exclusive. Therefore, the data provided by the Board of Investment provides a more specific and accurate surrogate value.⁹⁶

The Department was unable to locate a suitable surrogate value for purchased steam from Thailand or from any of the other countries on the surrogate country list. As noted above, the Department prefers to use surrogate values chosen from the primary surrogate country, however, where no reliable data exists in the primary surrogate country, the Department may look to additional countries for reliable surrogate values.⁹⁷ The Department has preliminarily determined to use the 2010-2011 financial statement of Hindalco Industries Limited from India,

⁹³ See Prelim SV Memo at 9.

⁹⁴ See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum at Comment 11.

⁹⁵ See Prelim SV Memo at 8.

⁹⁶ See id.

⁹⁷ See Policy Bulletin 04.1 at n. 7.

which contains a surrogate value for steam,⁹⁸ as it is the only information currently on the record for valuing steam, and is a source we have used in previous segments of this proceeding.⁹⁹

We used Thai transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from Siam Partners Group Company Limited.¹⁰⁰ We calculated the per-unit inland freight costs using the distance from five different provinces in Thailand to Thailand's largest city, Bangkok.¹⁰¹ We inflated the calculated a per-metric ton, per-kilometer surrogate inland freight because this source was from 2005.¹⁰²

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in Doing Business 2011: Thailand, published by the World Bank.¹⁰³

To value factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, the Department used the 2010 audited financial statement of Carbokarn Co., Ltd., the only Thai financial statement available on the record of this review.¹⁰⁴ Because the Department has

⁹⁸ See Jacobi's Surrogate Value Comments: Certain Activated Carbon from China, dated November 16, 2011, at Exhibit SV-7.

⁹⁹ See, e.g., Certain Activated Carbon from the People's Republic of China: Preliminary Results of the Third Antidumping Duty Administrative Review, and Preliminary Rescission in Part, 76 FR 23978, 23988 (April 29, 2011), unchanged in Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review, 76 FR 67142 (October 31, 2011).

¹⁰⁰ See Prelim SV Memo at 9.

¹⁰¹ See *id.*

¹⁰² See *id.*, at Exhibit 8.

¹⁰³ See Prelim SV Memo at 10.

¹⁰⁴ See Petitioners November 28, 2011, Surrogate Value Submission at Exhibits 5 & 6.

chosen Thailand as the primary surrogate country, the discussion here is limited to financial statements placed on the record from Thailand.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.¹⁰⁵ In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (“Yearbook”).

For these preliminary results, the Department calculated the labor input using the wage method described in Labor Methodologies. To value the respondent’s labor input, the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook. Although the Department further finds the two-digit description Sub-Classification 24 under ISIC-Revision 3 (“Manufacture of Chemicals and Chemical Products”) to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing labor data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using total 2005 manufacturing labor data reported by Thailand to the ILO, in accordance with section 773(c)(4) of the Act. For the preliminary results,

¹⁰⁵ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”). This notice followed the Federal Circuit decision in Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (CAFC 2010), which found that the regression-based method for calculating wage rates as stipulated by 19 CFR 351.408(c)(3) uses data not permitted by the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. 1677b(c)).

the calculated industry-specific wage rate is 135.93 Baht/hour. A more detailed description of the wage rate calculation methodology is provided in the Prelim SV Memo.

As stated above, the Department used Thai ILO data reported in 2005 under Chapter 6A of the ILO Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Pursuant to Labor Methodologies, the Department's practice is to consider whether financial ratios reflect labor expenses that are included in other elements of the respondent's factors of production (e.g., general and administrative expenses).¹⁰⁶ However, the financial statements used to calculate financial ratios in this review were insufficiently detailed to permit the Department to isolate whether any labor expenses were included in other components of NV. Therefore, in this review, the Department preliminary has made no adjustment to these financial statements.¹⁰⁷

Treatment of Datong Juqiang's Packing Factors

For these preliminary results, we are applying partial adverse facts available to Datong Juqiang for packing bags for certain customers. In the initial Section D questionnaire, the Department informs parties that if they receive any inputs used in the production process for free, they must include the amount of that input used.¹⁰⁸ In its Section D questionnaire response, Datong Juqiang reported the amount of packing bags it used for its other customers.¹⁰⁹ On March 15, 2012, in response to a supplemental questionnaire and request for documentation, Datong Juqiang stated that its agreement with the customers was over the phone, that it had no agreement in writing, and that it could provide no evidence that packing bags were supplied by those certain

¹⁰⁶ See Labor Methodologies, 76 FR at 36093-94.

¹⁰⁷ See Prelim SV Memo at 9.

¹⁰⁸ See Ltr. From the Department to Datong Juqiang, re: "NME Questionnaire", dated July 11, 2011 at D-6.

¹⁰⁹ See Datong Juqiang's section D questionnaire response, dated September 12, 2011 at page 15 and Exhibit D-10.

customers.¹¹⁰ Datong did not provide the Department with any additional information.

Therefore, because Datong Juqiang has failed to cooperate at the Department's request to the best of its ability in reporting the total amount packing bags used in the production of subject merchandise, for these preliminary results the Department is applying as partial adverse facts available the highest single, per-unit consumption of packing bags reported by Datong Juqiang as the packing bags used by Datong Juqiang in the packing stage for those certain customers.¹¹¹

Currency Conversion

Where appropriate, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Margin (Dollars Per Kilogram) ¹¹²
Datong Juqiang Activated Carbon Co., Ltd.	0.00 (<u>de minimis</u>)

¹¹⁰ See Datong Juqiang's supplemental section D questionnaire response, dated March 15, 2012, at 5-6; see also Datong Juqiang's supplemental section A, C & D questionnaire response, dated November 29, 2011 at 23.

¹¹¹ For further details, see Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Bob Palmer, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Datong Juqiang Activated Carbon Co., Ltd. in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China, dated concurrently with this notice ("DJAC Prelim Analysis Memo").

¹¹² In the second administrative review of this order, the Department determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208, 70210 (November 17, 2010).

Jacobi Carbons AB ¹¹³	1.49
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. ¹¹⁴	1.07
Datong Municipal Yunguang Activated Carbon Co., Ltd.	1.34
Jilin Bright Future Chemicals Company, Ltd.	1.34
Ningxia Mineral and Chemical Limited	1.34
Shanxi DMD Corporation	1.34
Shanxi Sincere Industrial Co., Ltd.	1.34
Shanxi Industry Technology Trading Co., Ltd.	1.34
Tangshan Solid Carbon Co., Ltd.	1.34
Tianjin Maijin Industries Co., Ltd.	1.34
PRC-Wide Rate ¹¹⁵	2.42

Disclosure and Public Comment

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.¹¹⁶ Interested

¹¹³ In Activated Carbon AR3, the Department found Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity and, because there has been no changes to this determination since the first administrative review, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 76 FR 67142 (October 31, 2011) ("Activated Carbon AR3").

¹¹⁴ In Activated Carbon AR1, the Department found Beijing Pacific Activated Carbon Products Co., Ltd., Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., and Ningxia Guanghua Activated Carbon Co., Ltd. are a single entity and, because there has been no changes to this determination since the first administrative review, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. See Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results, 74 FR 21317 (May 7, 2009), unchanged in First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009).

¹¹⁵ The PRC-Wide entity includes Hebei Foreign Trade and Advertising Corporation; Jilin Province Bright Future Industry and Commerce Co., Ltd.; and United Manufacturing International (Beijing) Ltd.

¹¹⁶ See 19 CFR 351.224(b).

parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review.¹¹⁷ Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for filing case briefs.¹¹⁸ Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹¹⁹

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept “the submission of additional, previously absent-from-the-record alternative surrogate value or financial ratio information” pursuant to 19 CFR 351.301(c)(1).¹²⁰ Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must

¹¹⁷ See 19 CFR 351.309(c)(1)(ii).

¹¹⁸ See 19 CFR 351.309(d).

¹¹⁹ See 19 CFR 351.309(c), (d).

¹²⁰ See Glycine From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

provide a written explanation of what information that is already on the record of the ongoing proceeding that the factual information is rebutting, clarifying, or correcting.

Additionally, pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, within 30 days of the date of publication of this notice and file the request via the Department's Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS").¹²¹ An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time (ET). Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act unless the deadline is extended.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondents whose weighted-average dumping margin is above de minimis, we calculated exporter/importer (or customer)-specific assessment rates for the

¹²¹ See 19 CFR 351.310(c).

merchandise subject to this review in accordance with 19 CFR 351.212(b)(1).¹²² In this and future reviews, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (i.e., per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. Where an importer (or customer)-specific per-unit rate is greater than de minimis, we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR. See 19 CFR 351.212(b)(1). Where an importer (or customer)-specific per-unit rate is zero or de minimis, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2). For the companies receiving a separate rate that were not selected for individual review, we will assign an assessment rate based on the rate we calculated for the mandatory respondent whose rate was not de minimis, as discussed above. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity (including Dapu) at the PRC-wide rate. Finally, for those companies for which this review has been preliminarily rescinded, the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2), if the review is rescinded for these companies.

Cash Deposit Requirements

¹²² In these preliminary results, the Department applied the assessment rate calculation method adopted in Final Modification for Reviews, i.e. on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or de minimis, i.e., less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of \$2.42 per kilogram;¹²³ and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

¹²³ See AR2 Carbon 70208, 70209 and accompanying Issues and Decisions Memorandum at Comment 3.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Paul Piquado
Assistant Secretary
for Import Administration

April 27, 2012
Date

[FR Doc. 2012-10838 Filed 05/03/2012 at 8:45 am; Publication Date: 05/04/2012]